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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/771,937	02/04/2004	Motoharu Usumi	FUJA 20.933 (100794-00551)	3778
26304	7590	10/02/2006	EXAMINER	
KATTEN MUCHIN ROSENMAN LLP 575 MADISON AVENUE NEW YORK, NY 10022-2585			WORJLOH, JALATEE	
			ART UNIT	PAPER NUMBER
			3621	

DATE MAILED: 10/02/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/771,937	USUMI, MOTOHARU	

<b>Examiner</b>	<b>Art Unit</b>	
Jalatee Worjoh	3621	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 04 February 2004.
- 2a) This action is FINAL.                  2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-5 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1-5 is/are rejected.
- 7) Claim(s) 5 is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All    b) Some \* c) None of:
1. Certified copies of the priority documents have been received.
  2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | Paper No(s)/Mail Date. _____                                      |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____. | 5) <input type="checkbox"/> Notice of Informal Patent Application |
|  | 6) <input type="checkbox"/> Other: _____.                         |

## **DETAILED ACTION**

1. Claims 1-5 have been examined.

### *Specification*

2. The disclosure is objected to because of the following informalities: typographical error; change “wh n” to “when” (see page 2, line 2).

Appropriate correction is required.

### *Claim Objections*

3. Claim 5 is objected to because of the following informalities: typographically error; delete “Remarks” (see line4). Appropriate correction is required.

### *Claim Rejections - 35 USC § 103*

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.
5. Claims 1-4 are rejected under 35 U.S.C. 103(a) as being unpatentable over Japanese Patent No. 200027030 to Kei in view of US Publication No. 2003/0236745 to Hartsell et al. (see English translation).

Referring to claim 1, Kei discloses a subscriber (i.e. user terminal) serving apparatus serving a user, a delivery server for delivering content (i.e. contents distribution module), a billing server for billing the delivery of the content (i.e. accounting means) (see abstract and paragraph [0008]), the subscriber serving apparatus includes monitoring means (see paragraph

[0009] – in a user terminal, an information storage means accumulates the information about the receiving quality of said contents) and the billing server includes judging means (i.e. decision means). Kei does not expressly disclose the judging means for judging whether to bill or not bill the user based on delivery quality of the monitored data stream, and bills the user based on the result of the judgment made by the judging means. Hartsell et al. disclose judging means for judging whether to bill or not bill the user based on delivery quality of the monitored data stream, and bills the user based on the result of the judgment made by the judging means (see claim 11 – generating billing information comprises generating billing information for delivery of said streaming content according to the content delivery price model associated with the respective content delivery quality model of the delivered content). At the time the invention was made, it would have been obvious to a person of ordinary skill in the art to modify the system disclosed by Kei to include judging means for judging whether to bill or not bill the user based on delivery quality of the monitored data stream, and bills the user based on the result of the judgment made by the judging means. One of ordinary skill in the art would have been motivated to do this because it eliminates the loss of packet and data quality of streamed content that normally occurs when there is a system overload (see paragraph [0006] of Kei).

Claim 2 is rejected on the same rationale as claim 1 above.

Referring to claim 3, Kei discloses the delivery server includes means for identifying the subscriber serving apparatus serving the user that originated a delivery request (see paragraph [0033] – the contents distribution module searches the contents database based on the user ID and password), and for sending information specifying the user and the data stream to be monitored to the subscriber serving apparatus (see paragraph [0045]) and the subscriber serving

Art Unit: 3621

apparatus, based on the information received from the delivery server, identifies the user and the data stream to be monitored by the monitoring means (see paragraph [0046]).

Claim 4 is rejected on the same rationale as claim 3 above.

6. Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over Kei and Hartsell et al. as applied to claim 1 above, and further in view of US Publication No. 2002/0128936 to Sako et al.

Kei discloses judging means (see claim 1 above). Kei does not expressly disclose the judging means includes a billing judgment table for setting billing parameter, and determines the amount of billing to be charged to the user, based on the result of the judgment of the delivery quality of the monitored data stream and the billing. Sako et al. disclose a billing judgment table for setting billing parameter, and determines the amount of billing to be charged to the user, based on the result of the judgment of the delivery quality of the monitored data stream and the billing (see paragraph [0041] – the quality classifications table stores billing information in order to carry out the billing in accordance with the quality of the distributed contents data). At the time the invention was made, it would have been obvious to a person of ordinary skill in the art to modify the system disclosed by Kei to include a billing judgment table for setting billing parameter, and determines the amount of billing to be charged to the user, based on the result of the judgment of the delivery quality of the monitored data stream and the billing. One of ordinary skill in the art would have been motivated to do this because it assist in determining the appropriate bill for the type of content quality distributed (see Sako et al. paragraph [0041]).

Art Unit: 3621

***Conclusion***

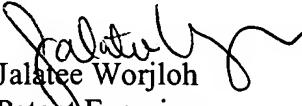
7. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

- US Publication No. 2005/0246282 to Naslund et al. discloses monitoring of digital content provided from a content provider over a network.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jalatee Worjloh whose telephone number is (571) 272-6714. The examiner can normally be reached on Mondays-Thursdays 8:30 - 7:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Andrew Fischer can be reached on (571) 272-6779. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300 for Regular/After Final Actions and 571-273-6714 for Non-Official/Draft.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

  
Jalatee Worjloh  
Patent Examiner  
Art Unit 3621

Application/Control Number: 10/771,937

Art Unit: 3621

Page 6

September 26, 2006